



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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November 26, 1997
AO-97-23

Evan Slavitt, Esq.
Gadsby & Hannah, LLP
225 Franklin Street
Boston, MA 02110-2811

Re: Candidate recruitment, candidate schools, and independent expenditures

Dear Mr. Slavitt:

This letter is in response to your October 7 and 8, 1997 requests for advisory opinions.

You have stated that you represent a number of individuals who are planning to establish a non-profit advocacy group ("the Entity") to promote certain philosophic and political views concerning the relationship of government and families in society, which you have described as a "pro-family agenda." Among the activities contemplated are the following:

- general media relations,
- development of position papers and media packages,
- development of polling and tracking data,
- development of general positions concerning the relationship of government and the family, and
- endorsement or non-endorsement of specific legislative proposals.

The Entity proposes to (1) engage in the recruitment of candidates (regardless of party affiliation) who support the Entity's agenda; (2) operate "candidates' schools" to be made available to such candidates either at no charge or at reduced rates¹; and (3) advocate support of candidates who support the Entity's agenda (specifically by encouraging individuals to make independent expenditures to support the endorsed candidates). The Entity would publish a newsletter and provide information packets in part to educate members and others regarding the issues and encourage support of endorsed candidates. The

¹ You do not know if candidates who do not support the Entity's agenda would be able to attend candidates' school classes.

Entity would not make contributions to candidates. Finally, the Entity will not serve as an intermediary or conduit for funds which members may spend to support candidates.

Question

If the Entity engages in the proposed activities would it be considered a political committee subject to the limitations and reporting requirements imposed by the campaign finance law?

Answer

Based on the facts in your letters and your conversations with OCPF staff, I am unable to determine at this time whether the Entity would be considered an "issues advocacy" organization, a political committee, or perhaps both. The contemplated activities listed in your letter may be undertaken by political committees or issues advocacy groups.

If the **primary** purpose of the Entity is the endorsement of candidates and the effort to get these candidates elected, the Entity would be a political committee. If, on the other hand, the Entity does not raise and spend funds primarily to influence the election of candidates, but instead works primarily to achieve other goals, e.g., influencing legislation or increasing public awareness regarding certain issues, it would be an issues advocacy group rather than a political committee. An organization which raises money for election-related purposes is considered a political committee.

Assuming the Entity does not raise and spend funds primarily to influence the election of candidates, it may recruit candidates, encourage individuals to make independent expenditures (and contributions) to endorsed candidates, and operate candidates' schools, without such activity causing the Entity to be considered a political committee.

Discussion

1. The Entity would not be a political committee unless it raises funds and makes expenditures primarily for the purpose of influencing the election of candidates. Therefore, the recruitment of candidates, by itself, would not result in a group being required to become a political committee.

The campaign finance law defines a "political committee" as any association, organization, or other group of persons "which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . ." (Emphasis added). See M.G.L. c. 55, s. 1. A political action committee is defined as a political committee which is not a candidate's committee, political party committee, or ballot question committee. Id.

Organizations which make expenditures, but do not solicit or receive funds, to support or oppose candidates, PACs or party committees, however, are not treated as political committees unless the expenditures are "more than incidental." Expenditures are more than incidental if they exceed, in the aggregate, in a calendar year, either 15% of such organization's gross revenues for the previous calendar

year, or 10% of such organization's gross revenues for the previous calendar year, whichever is less. See IB-88-01.

A group which is organized to mobilize public opinion, recruit and endorse candidates, or lobby officials regarding a particular issue might be considered an issues advocacy organization. Such an organization, which does not raise funds or make expenditures primarily to promote or oppose candidates, political committees or parties, is not required to register or report as a political committee even if the effect of its activities may indirectly encourage support of a particular group of candidates. Compare AO-94-43 and AO-95-19. In AO-94-43, the office concluded that the Republican Club of Massachusetts did not need to register as a PAC because the Club did not make contributions to candidates - it published a calendar of events of interest to Republican Party activists and supporters, sponsored unity luncheons as a means of raising funds to offset the Club's operating costs and to provide a forum for bringing activists and supporters together. The office concluded that such primarily social and informational "party building" activities did not constitute "contributions" as defined by the campaign finance law. See also Federal Election Commission v. GOPAC, Inc., 917 F.Supp. 851 (D.D.C. 1996)(organization which provided candidate training and other services to promote election of candidates for state offices was not subject to Federal Election Campaign Act because "major purpose" of organization was not to support election of federal candidates).

In contrast, in AO-95-19, the office determined that the Association of Massachusetts Republican Town & City Committee Chairmen (AMRC) should register as a PAC because the AMRC made expenditures primarily to assist the Republican Party. Specifically, the AMRC bylaws stated that the organization "will provide consulting services and hands-on assistance to the local committees in forming and strengthening their organizations by attracting party activists and assisting with fund raising, speakers, programs, committee recruitment and other services." See also AO-93-28 (the Middlesex Club, which stated that its purpose was "to preserve, teach and foster time-honored Republican principles, in the tradition of Abraham Lincoln, and to develop social intercourse among [Club] members" would not be required to become a PAC) and AO-96-19 (the Western Mass. Republicans group, which acknowledged that it raises funds to be used to make contributions to candidates, was properly a PAC.)

Although the advisory opinions cited in the previous paragraphs relate to groups supporting the principles of the a political party, PACs are frequently formed to support candidates in a "non-partisan" manner. For example, a PAC may be formed to support candidates who have been determined to be interested in environmental issues. Some of the candidates supported by such a PAC may be Democrats and some may be Republicans.

The recruitment of candidates, by itself, is not an activity which would necessarily cause a group to become a political committee. As this office observed in AO-94-29, "merely encouraging people, in general, to run for office" does not lead to the conclusion that a group must register as a political committee. The Entity would become subject to the reporting requirements and limitations of chapter 55, however, if it makes more than incidental expenditures primarily to advocate the election of selected candidates or solicits and receives funds primarily for that purpose.

2. The operation of a candidates' school which is open to all interested persons would not cause a group to be considered a PAC.

The Entity may make expenditures to fund a candidates' school without being required to register as a PAC. I assume that the school would be open to all candidates, i.e., it would not be restricted to "pro family" candidates and would be available to any candidate at the same fee.

The fact that a school may be "non-partisan" makes no difference in determining whether the Entity should register as a PAC. If some, but not all, candidates may attend at a discount, those candidates who attend would be seen to have received an in-kind contribution from the Entity.

3. To the extent an issues advocacy organization communicates with members, no "contributions" or "expenditures" subject to the campaign finance law are made, but to the extent the organization communicates to non-members, it may be making an independent expenditure which would then need to be disclosed in accordance with section 18A of the campaign finance law.

Many issues advocacy organizations are also "membership organizations." The campaign finance law provides a specific exemption for certain expenditures made by membership organizations: The costs incurred by such organizations (not including a business or professional corporation) to communicate with members or with members' families, even if such communication encourages support of a candidate, need not be disclosed as "contributions" or "expenditures." See M.G.L. c. 55, s. 1.

An issues advocacy organization is a "membership organization" for purposes of the campaign finance law if it identifies individuals within the organization as members. See 970 CMR 2.02. In addition to identifying individuals as members, however, persons are "members" of an organization only if the organization requires some affirmative action to be taken by the person in order to become a member, e.g., making a request to be included on the membership list. See AO-97-09.

In 1994 the campaign finance law was amended to state that "communications from a membership organization, not including a corporation subject to section eight, to its members and their families on any subject shall not be deemed to be a contribution or expenditure." See M.G.L. c. 55, s. 1. Political committees may not be "membership organizations." See 970 CMR 2.02. If an association is a "membership organization," costs incurred to distribute newsletters to members (regardless of the content of the newsletters) are not "contributions" or "expenditures" subject to the reporting provisions and limitations of the campaign finance law. Communications with members regarding how members may make independent expenditures to a particular set of candidates would therefore not involve the Entity's making of "expenditures" or "contributions."

Independent expenditures are defined by section 18A of chapter 55 as follows:

The term "independent expenditure" shall mean an expenditure by an individual, group, or association not defined as a political committee expressly advocating the election or defeat of a clearly identified candidate which is made **without cooperation or consultation with any**

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candidate, or any agent of a candidate and which is not made in concert with, or at the request or suggestion of, any candidate, or nonelected political committee organized on behalf of a candidate or agent of such candidate.

If the entity were to issue, without cooperating or consulting with any candidate or committee, a newsletter or other communication to non-members of the Entity (for example, to inform non-members of its endorsement of a candidate), such activity would be considered an independent expenditure made by the Entity. Independent expenditures, to the extent they exceed \$100 during a calendar year, would have to be disclosed by the Entity on Form 18A.² The making of the independent expenditures would not, however, require the Entity to register as a political committee.

This opinion is solely within the context of the campaign finance law and is provided on the basis of representations in your letters and conversation with OCPF staff.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan".

Michael J. Sullivan
Director

MJS/cp

² In addition, the individuals who respond to the Entity's suggestion by making independent expenditures must disclose the expenditures if over \$100 during a calendar year.